

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS website.

Form 19b-4 Information

Add Remove View

The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change

Add Remove View

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications

Add Remove View

Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit 3 - Form, Report, or Questionnaire

Add Remove View

Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit 4 - Marked Copies

Add Remove View

The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

Add Remove View

The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

Partial Amendment

Add Remove View

If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

ITEM 1. Text of the Proposed Rule

(a) Pursuant to the provisions of Section 19(b)(4) under the Securities Exchange Act of 1934 (“Act”), NYSE Arca, Inc. (“NYSE Arca” or “Exchange”), through its subsidiary NYSE Arca Equities, Inc. (“NYSE Arca Equities” or “Corporation”), proposes to amend its rule with the Securities and Exchange Commission (“Commission” or “SEC”), NYSE Arca Equities Rule 7.10, that would correct and provide commentary in subsection (b) and set forth the guidelines by which the Corporation determines clearly erroneous executions defined in Section 7.10(a). The text of the proposed rule is attached as Exhibit 5.

(b) Not applicable.

(c) Not applicable.

ITEM 2. Procedures of the Self-Regulatory Organization

(a) The proposed rule is being submitted by staff pursuant to authority delegated by the NYSE Arca and NYSE Arca Equities Board of Directors.

(b) Questions and comments regarding the proposed rule may be directed to the following:

Melanie Grace
NYSE Group, Inc.
115 Sansome Street
San Francisco, CA 94104
Phone: (415) 393-4135
Fax: (415) 393-4018

ITEM 3. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule1. Purpose

Pursuant to NYSE Arca Equities Rule 7.10(a), a clearly erroneous execution is defined as an execution at a price, for a quantity of shares, or with a symbol that is

substantially inconsistent with the current trading pattern of the issue. Equities Trading Permit (“ETP”) Holders that use the Corporation’s equities trading platform, the Archipelago Exchange (“ArcaEx”), are responsible for ensuring that the price and type of an order entered into the ArcaEx system is appropriate. To maintain the integrity of ArcaEx, the Corporation reserves the right to modify or cancel the terms of transactions executed through ArcaEx if the Corporation determines such transactions resulted from the placement of an order or a system malfunction or disruption that results in a clearly erroneous execution. The Corporation also reserves the right to delete from the consolidated tape(s) any clearly erroneous error even if the parties do not agree to cancel or modify the terms of the transaction. The Corporation’s right to cancel or modify such transactions is at its sole discretion and upon such information that the Corporation deems adequate.

There are various circumstances in which an officer of the Corporation must consider several factors to determine whether a clearly erroneous error has resulted from a transaction. Rule 7.10(c)(5) sets forth the following circumstances:

- **Unjust Enrichment.** The Corporation requires that parties make a good faith effort to resolve any problems resulting from an erroneous execution. Parties must attempt to reconcile a problem at the request of the Corporation when it is reasonably apparent that, but for an error, an execution at a particular price or for a quantity of shares would not have occurred. When parties cannot mutually agree to a satisfactory solution of an erroneous execution, one of the parties may request a ruling by the Corporation. The Corporation may determine to cancel or modify the terms of an erroneous execution even if the other party does not request such action. If the

Corporation deems an execution to be erroneous (i.e., system generated price alerts, inquiries from the primary listing exchange and/or third party vendors), the Corporation may cancel or modify the terms of an erroneous execution even if the parties to the trade do not request such action.

- **Ruling Resolution Criteria.** Upon a request for a ruling by a party, the Corporation shall consider the numerical factors of the execution price(s) and the trade(s) in question. In addition, the Corporation may consider additional factors as described below.

- *Numerical Guidelines*

-During the core session:

For securities that are priced less than \$100.00, executions greater than \$1.00 or 10% away from the consolidated last sale will be deemed clearly erroneous; and

For securities that are priced equal to or greater than \$100.00, executions greater than \$2.00 away from the consolidated last sale will be deemed clearly erroneous.

-During early and late sessions:

For securities that are priced less than \$100.00, executions greater than \$2.00 or 15% away from the consolidated last sale will be deemed clearly erroneous; and

For securities that are priced equal to or greater than \$100.00, executions greater than \$3.00 away from the consolidated last sale will be deemed to be clearly erroneous.

- *Market Order Auction*

For securities that are priced less than \$100.00, executions greater than \$1.00 or 10% away from the consolidated last sale will be deemed clearly erroneous; and

For securities that are priced equal to or greater than \$100.00, executions greater than \$2.00 away from the consolidated last sale will be deemed clearly erroneous.

- *Closing Auction*

For securities that are priced less than \$100.00, executions greater than \$1.00 or 10% away from the consolidated last sale will be deemed clearly erroneous; and

For securities that are priced equal to or greater than \$100.00, executions greater than \$2.00 away from the consolidated last sale will be deemed clearly erroneous.

- *Additional Factors.* In addition to the numerical guidelines, the officer may consider the following circumstances in order to determine whether a clearly erroneous execution has occurred:

-NYSE Arca Equities Rules;

- SEC Rules;
 - System malfunctions or disruptions;
 - Volume and volatility of the security;
 - News released concerning the security;
 - Whether the security was recently halted and/or resumed trading;
 - Whether the security is an initial public offering;
 - Stock-splits, reorganizations or another corporation action that may have affected the security;
 - Volatility of general market conditions;
 - Opening and late session executions;
 - Validity of the consolidated tape trades and quotes; and
 - Consideration of primary market indications.
- **Executions Inconsistent with Trading Patterns.** Executions that fall within Rule 7.10(c)(5) but deemed by the Corporation to be inconsistent with trading patterns of a particular stock are subject to review and ruling by the Corporation. Trading pattern criteria may include but is not limited to the following:
 - (i) Current day's high/low prices;
 - (ii) Recent day's and week's high/low prices;
 - (iii) Executions outside 52-week high/low prices;
 - (iv) News affecting high/low prices;

- (v) Effect of a single large order creating several trades at various prices; and
 - (vi) The price spread or the stock's average daily trading range (e.g., stocks that typically have a trading pattern that do not fluctuate more than .10 to .15 per day and stocks that may fluctuate greater than \$1.00 per day).
- **Undisputed Rulings.** When information that was not available to the Corporation at the time of a ruling later becomes available and brought to the attention of the Corporation, an officer may evaluate the information on a case-by-case basis. In no event will the Corporation reverse the original ruling. If the Corporation determines that the execution warrants further consideration, the Corporation may recommend an appropriate resolution to the disadvantaged party.
 - **Incoming Erroneous Order Accesses Liquidity-Providing Quote.** If an incoming order accesses a liquidity-providing quote in the book and such liquidity quote is (a) equal to or less than 25% away from the last sale during the core trading session; or (b) equal to or less than 30% away from the last sale in the pre-market or post-market sessions then the disadvantaged party may be forced to accept an adjustment offered by the counterparty, if such offer is within the guidelines of Section 7.10(c)(5). If an incoming order that accesses liquidity-providing quote is (a) greater than 25% away from the last sale during the core trading session; or (b) greater than 30% away from the last sale in the pre-market or post-market sessions then the resulting trade(s) will be automatically busted and no adjustments will be made.
 - **Incoming Order with Multiple Orders/Securities Executions.** If a customer order contains multiple securities (i.e., basket order) and/or multiple executions, the party requesting a ruling of the erroneous executions will provide the Corporation with an

electronic spreadsheet of all trades in question. The spreadsheet will be submitted within 30 minutes of the request for a ruling and contain the name of the security, the time of execution, the executed price and, when practicable, the consolidated last sale. The Corporation will review such occurrences utilizing only the numerical guidelines provided in Section 7.10(c)(5)(B)(i). Execution prices outside the numerical guidelines will be busted. Price adjustments will not be considered. All clearly erroneous executions of multiple securities and multiple executions will be communicated to the ETP Holder(s) via telephone, electronic mail and/or website display.

- **Removal of Trades from Tape.** The Corporation may direct the processors for the consolidated tapes to remove any executions determined to be a clearly erroneous error even if the execution is not cancelled or adjusted pursuant to Section 7.10(c) to avoid having a clearly erroneous error establish a high, low, opening, closing or other key market price that is not reasonably related to the current consolidated market price at the time of the erroneous error.
- **Odd Lot Prohibitions.** In accordance with NYSE Arca Rule 7.38(c), failure to aggregate odd lot orders into round lot orders when such orders are for the same account or for various accounts in which there is a common monetary interest may be considered a clearly erroneous execution. In addition, unbundling round lots for the purpose of entering odd lot limit orders in comparable amounts will also be considered a clearly erroneous execution. Unbundling prohibitions and failing to aggregate odd lot orders described in (i) and (ii) above are applicable during early, core and late trading sessions and the limit order auction (8:00 a.m. EST) and market

order auction (9:30 a.m. EST). Violation of (i) or (ii) above is considered conduct inconsistent with just and equitable principals of trade and is subject to enforcement action. Prohibited odd lot transactions are subject to nullification by the Corporation.

2. Basis

NYSE Arca believes that the proposed rule would enhance competition by providing ETP Holders and associated persons with accurate and current information concerning the rules related to clearly erroneous executions. The Exchange believes that the proposed rule is consistent with Section 6(b)¹ of the Act, in general, and furthers the objectives of Section 6(b)(5),² in particular, in that it is designed to facilitate transactions in securities, to promote just and equitable principles of trade, to foster competition and to protect investors and the public interest.

ITEM 4. Self-Regulatory Organization's Statement on Burden on Competition

NYSE Arca does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

ITEM 5. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

ITEM 6. Extension of Time Period for Commission Action

The Exchange does not consent to an extension of the time period specified in Section 19(b)(2) of the Act.

¹ 15 U.S.C. §78f(b).

² 15 U.S.C. §78f(b)(5).

ITEM 7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

The Exchange requests the Commission to find good cause to grant accelerated approval of this rule filing pursuant to Section 19(b)(2) of the Act in order to provide ETP Holders and associated persons with accurate and current information concerning the rules related to clearly erroneous executions, which is consistent with the intent of the proposed rule change.

ITEM 8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

The proposed rule change is not based on the rules of another self-regulatory organization or the Commission.

ITEM 9. Exhibits

1. Exhibit 1
2. Exhibit 5

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-NYSEArca-2006-44)
Self-Regulatory Organizations; Notice of Filing of Proposed Rule by NYSE Arca
Equities, Inc. Establishing Guidelines for Clearly Erroneous Executions

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on July 7, 2006, NYSE Arca, Inc. (“NYSE Arca” or “Exchange”) filed with the Securities and Exchange Commission (“Commission” or “SEC”) the proposed rule as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule

The Exchange, through its subsidiary NYSE Arca Equities, Inc. (“NYSE Arca Equities” or “Corporation”), proposes to amend its rule with the Commission, NYSE Arca Equities Rule 7.10, that would correct and provide commentary in subsection (b) and set forth the guidelines by which the Corporation determines clearly erroneous executions defined in Section 7.10(a). The text of the proposed rule is attached as Exhibit 5.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule and discussed any comments it received on the proposed rule. The text of these statements may be

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule

1. Purpose

Pursuant to NYSE Arca Equities Rule 7.10(a), a clearly erroneous execution is defined as an execution at a price, for a quantity of shares, or with a symbol that is substantially inconsistent with the current trading pattern of the issue. Equities Trading Permit (“ETP”) Holders that use the Corporation’s equities trading platform, the Archipelago Exchange (“ArcaEx”), are responsible for ensuring that the price and type of an order entered into the ArcaEx system is appropriate. To maintain the integrity of ArcaEx, the Corporation reserves the right to modify or cancel the terms of transactions executed through ArcaEx if the Corporation determines such transactions resulted from the placement of an order or a system malfunction or disruption that results in a clearly erroneous execution. The Corporation also reserves the right to delete from the consolidated tape(s) any clearly erroneous error even if the parties do not agree to cancel or modify the terms of the transaction. The Corporation’s right to cancel or modify such transactions is at its sole discretion and upon such information that the Corporation deems adequate.

There are various circumstances in which an officer of the Corporation must consider several factors to determine whether a clearly erroneous error has resulted from a transaction. Rule 7.10(c)(5) sets forth the following circumstances:

- **Unjust Enrichment.** The Corporation requires that parties make a good faith effort to resolve any problems resulting from an erroneous execution. Parties must attempt to reconcile a problem at the request of the Corporation when it is reasonably apparent that, but for an error, an execution at a particular price or for a quantity of shares would not have occurred. When parties cannot mutually agree to a satisfactory solution of an erroneous execution, one of the parties may request a ruling by the Corporation. The Corporation may determine to cancel or modify the terms of an erroneous execution even if the other party does not request such action. If the Corporation deems an execution to be erroneous (i.e., system generated price alerts, inquiries from the primary listing exchange and/or third party vendors), the Corporation may cancel or modify the terms of an erroneous execution even if the parties to the trade do not request such action.

- **Ruling Resolution Criteria.** Upon a request for a ruling by a party, the Corporation shall consider the numerical factors of the execution price(s) and the trade(s) in question. In addition, the Corporation may consider additional factors as described below.
 - *Numerical Guidelines*
 - During the core session:

For securities that are priced less than \$100.00, executions greater than \$1.00 or 10% away from the consolidated last sale will be deemed clearly erroneous; and

For securities that are priced equal to or greater than \$100.00, executions greater than \$2.00 away from the consolidated last sale will be deemed clearly erroneous.

-During early and late sessions:

For securities that are priced less than \$100.00, executions greater than \$2.00 or 15% away from the consolidated last sale will be deemed clearly erroneous; and

For securities that are priced equal to or greater than \$100.00, executions greater than \$3.00 away from the consolidated last sale will be deemed to be clearly erroneous.

- *Market Order Auction*

For securities that are priced less than \$100.00, executions greater than \$1.00 or 10% away from the consolidated last sale will be deemed clearly erroneous; and

For securities that are priced equal to or greater than \$100.00, executions greater than \$2.00 away from the consolidated last sale will be deemed clearly erroneous.

- *Closing Auction*

For securities that are priced less than \$100.00, executions greater than \$1.00 or 10% away from the consolidated last sale will be deemed clearly erroneous; and

For securities that are priced equal to or greater than \$100.00, executions greater than \$2.00 away from the consolidated last sale will be deemed clearly erroneous.

- *Additional Factors.* In addition to the numerical guidelines, the officer may consider the following circumstances in order to determine whether a clearly erroneous execution has occurred:

- NYSE Arca Equities Rules;

- SEC Rules;

- System malfunctions or disruptions;

- Volume and volatility of the security;

- News released concerning the security;

- Whether the security was recently halted and/or resumed trading;

- Whether the security is an initial public offering;

- Stock-splits, reorganizations or another corporation action that may have affected the security;

- Volatility of general market conditions;

- Opening and late session executions;

- Validity of the consolidated tape trades and quotes; and

- Consideration of primary market indications.

- **Executions Inconsistent with Trading Patterns.** Executions that fall within Rule 7.10(c)(5) but deemed by the Corporation to be inconsistent with trading patterns of a particular stock are subject to review and ruling by the Corporation. Trading pattern criteria may include but is not limited to the following:
 - (i) Current day's high/low prices;
 - (ii) Recent day's and week's high/low prices;
 - (iii) Executions outside 52-week high/low prices;
 - (iv) News affecting high/low prices;
 - (v) Effect of a single large order creating several trades at various prices; and
 - (vi) The price spread or the stock's average daily trading range (e.g., stocks that typically have a trading pattern that do not fluctuate more than .10 to .15 per day and stocks that may fluctuate greater than \$1.00 per day).

- **Undisputed Rulings.** When information that was not available to the Corporation at the time of a ruling later becomes available and brought to the attention of the Corporation, an officer may evaluate the information on a case-by-case basis. In no event will the Corporation reverse the original ruling. If the Corporation determines that the execution warrants further consideration, the Corporation may recommend an appropriate resolution to the disadvantaged party.

- **Incoming Erroneous Order Accesses Liquidity-Providing Quote.** If an incoming order accesses a liquidity-providing quote in the book and such liquidity quote is (a) equal to or less than 25% away from the last sale during the core trading session; or (b) equal to or less than 30% away from the last sale in the pre-market or post-market

sessions then the disadvantaged party may be forced to accept an adjustment offered by the counterparty, if such offer is within the guidelines of Section 7.10(c)(5). If an incoming order that accesses liquidity-providing quote is (a) greater than 25% away from the last sale during the core trading session; or (b) greater than 30% away from the last sale in the pre-market or post-market sessions then the resulting trade(s) will be automatically busted and no adjustments will be made.

- **Incoming Order with Multiple Orders/Securities Executions.** If a customer order contains multiple securities (i.e., basket order) and/or multiple executions, the party requesting a ruling of the erroneous executions will provide the Corporation with an electronic spreadsheet of all trades in question. The spreadsheet will be submitted within 30 minutes of the request for a ruling and contain the name of the security, the time of execution, the executed price and, when practicable, the consolidated last sale. The Corporation will review such occurrences utilizing only the numerical guidelines provided in Section 7.10(c)(5)(B)(i). Execution prices outside the numerical guidelines will be busted. Price adjustments will not be considered. All clearly erroneous executions of multiple securities and multiple executions will be communicated to the ETP Holder(s) via telephone, electronic mail and/or website display.
- **Removal of Trades from Tape.** The Corporation may direct the processors for the consolidated tapes to remove any executions determined to be a clearly erroneous error even if the execution is not cancelled or adjusted pursuant to Section 7.10(c) to avoid having a clearly erroneous error establish a high, low, opening, closing or other

key market price that is not reasonably related to the current consolidated market price at the time of the erroneous error.

- **Odd Lot Prohibitions.** In accordance with NYSE Arca Rule 7.38(c), failure to aggregate odd lot orders into round lot orders when such orders are for the same account or for various accounts in which there is a common monetary interest may be considered a clearly erroneous execution. In addition, unbundling round lots for the purpose of entering odd lot limit orders in comparable amounts will also be considered a clearly erroneous execution. Unbundling prohibitions and failing to aggregate odd lot orders described in (i) and (ii) above are applicable during early, core and late trading sessions and the limit order auction (8:00 a.m. EST) and market order auction (9:30 a.m. EST). Violation of (i) or (ii) above is considered conduct inconsistent with just and equitable principals of trade and is subject to enforcement action. Prohibited odd lot transactions are subject to nullification by the Corporation.

2. Statutory Basis

The Exchange believes that the proposed rule would enhance competition by providing ETP Holders and associated persons with accurate and current information concerning the rules related to clearly erroneous executions. The Exchange believes that the proposed rule is consistent with Section 6(b)³ of the Act, in general, and furthers the objectives of Section 6(b)(5),⁴ in particular, in that it is designed to facilitate transactions in securities, to promote just and equitable principles of trade, to foster competition and to protect investors and the public interest.

³ 15 U.S.C. §78f(b).

⁴ 15 U.S.C. §78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Received from Members, Participants, or Others

Written comments on the proposed rule were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve such rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov.
- Please include File Number SR-NYSEArca-2006-44 on the subject line.

Paper comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street NE, Washington, DC 20549.

All submissions should refer to File Number SR-NYSEArca-2006-44. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, Station Place, 100 F Street, N.E., Washington, DC 20549-9303. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEArca-2006-44 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority⁵.

Nancy M. Morris
Secretary

⁵ 17 CFR 200.30-3(a)(12).

EXHIBIT 5**Text of the Proposed Rule Change:**¹

NYSE Arca Equities Rules

RULE 7 EQUITIES TRADING

* * * * *

Rule 7.10 Clearly Erroneous Executions

Rule 7.10 (a) No change.

(b) *Request for Corporation Review.* An ETP Holder that receives an execution on an order that was submitted erroneously to the Corporation for its own or customer account may request that the Corporation review the transaction under this Rule. Such request for review shall be made via telephone, facsimile or e-mail and submitted within [fifteen (15)] thirty (30) minutes of the trade in question. Upon receipt, the counterparty to the trade, if any, shall be notified by the Corporation as soon as practicable. Thereafter, an Officer of the Corporation or such other designee of the Corporation ("Officer") shall review the transaction under dispute and determine whether it is clearly erroneous, with a view toward maintaining a fair and orderly market and the protection of investors and the public interest. Each party to the transaction shall provide, within thirty (30) minutes of the request for review, any supporting written information as may be reasonably requested by Officer to aid resolution of the matter. [Either party to the disputed trade may request the supporting written information provided by the other party on the matter.]

Commentary:

.01 The Corporation may consider requests that are submitted more than 30 minutes after the transaction, on a case-by-case basis.

(c) *Review Procedures.*

(1) Unless both parties (or party, in the case of a cross order or an order entered into the Corporation's Portfolio Crossing Service) to the disputed transaction agree to withdraw the initial request for review, the transaction under dispute shall be reviewed, and a determination shall be rendered by the Officer pursuant to Section 7.10(c)(5). If the Officer determines that the transaction is not clearly erroneous, the Officer shall decline to take any action in connection with the completed trade. In the event that the Officer determines that the transaction in dispute is clearly erroneous, the Officer shall declare the transaction null and void or modify one or more of the terms of the transaction [to

¹ New text is underlined, deleted text is in brackets.

achieve an equitable rectification of the error that would place the parties in the same position, or as close as possible to the same position they would have been in had the error not occurred]. The parties shall be promptly notified of the determination.

(2) – (4) No change.

(5) Pursuant to Section 7.10(c)(1), an Officer shall determine whether a disputed transaction is a clearly erroneous execution in the following circumstances:

(A) Unjust Enrichment.

- (i) Parties shall make a good faith effort to resolve any trading discrepancies that result from an erroneous execution. Parties shall attempt to reconcile trading discrepancies at the request of the Corporation when it is reasonably apparent that, but for an error, an execution at a particular price or for a quantity of shares would not have occurred.
- (ii) When parties cannot mutually agree to a satisfactory solution of an erroneous execution, one of the parties may request a ruling by the Corporation. The Corporation may determine to cancel or modify the terms of an erroneous execution even if the counterparty does not request such action.
- (iii) If the Corporation deems an execution to be erroneous (i.e., system generated price alerts, inquiries from the primary listing exchange and/or third party vendors), the Corporation may cancel or modify the terms of an erroneous execution even if the parties to the trade do not request such action.

(B) Ruling Resolution Criteria. Upon a request for a ruling by a party, the Corporation shall consider the numerical factors of the execution price(s) and the trade(s) in question. In addition, the Corporation may consider additional factors as described in 7.10(c)(5)(ii).

(i) Numerical Guidelines

(a) During the core session:

- 1. For securities that are priced less than \$100.00, executions greater than \$1.00 or 10% away from the consolidated last sale will be deemed clearly erroneous; and
- 2. For securities that are priced equal to or greater than \$100.00, executions greater than \$2.00 away from the consolidated last sale will be deemed clearly erroneous.

(b) During early and late sessions:

- 1. For securities that are priced less than \$100.00, executions greater than \$2.00 or 15% away from the consolidated last sale will be deemed clearly erroneous; and
- 2. For securities that are priced equal to or greater than \$100.00, executions greater than \$3.00 away from the consolidated last sale will be deemed clearly erroneous.

- (c) Market Order Auction
 - 1. For securities that are priced less than \$100.00, executions greater than \$1.00 or 10% away from the consolidated last sale will be deemed clearly erroneous; and
 - 2. For securities that are priced equal to or greater than \$100.00, executions greater than \$2.00 away from the consolidated last sale will be deemed clearly erroneous.
- (d) Closing Auction
 - 1. For securities that are priced less than \$100.00, executions greater than \$1.00 or 10% away from the consolidated last sale will be deemed clearly erroneous; and
 - 2. For securities that are priced equal to or greater than \$100.00, executions greater than \$2.00 away from the consolidated last sale will be deemed clearly erroneous.
- (ii) Additional Factors. In addition to the Numerical Guidelines listed in Section 7.10(c)(5)(B)(i), the Officer may consider the following circumstances in order to determine whether a clearly erroneous execution has occurred:
 - (a) NYSE Arca Equities Rules;
 - (b) SEC Rules;
 - (c) System malfunctions or disruptions;
 - (d) Volume and volatility of the security;
 - (e) News released concerning the security;
 - (f) Whether the security was recently halted and/or resumed trading;
 - (g) Whether the security is an initial public offering;
 - (h) Stock-splits, reorganizations or another corporation action that may have affected the security;
 - (i) Volatility of general market conditions;
 - (j) Opening and late session executions;
 - (k) Validity of the consolidated tape trades and quotes;
 - (l) Consideration of primary market indications;
- (C) Executions Inconsistent with Trading Patterns. Executions within the Corporation's guidelines in this Section 7.10(c)(5) but deemed by the Corporation to be inconsistent with trading patterns of a particular stock are subject to review and ruling by the Corporation. Trading pattern criteria may include but is not limited to the following:
 - (i) Current day's high/low prices;
 - (ii) Recent day's and week's high/low prices;
 - (iii) Executions outside 52-week high/low prices;

- (iv) News affecting high/low prices;
- (v) Effect of a single large order creating several trades at various prices; and
- (vi) The price spread of the stock's average daily trading range (e.g., stocks that typically have a trading pattern that do not fluctuate more than .10 to .15 per day or stocks that may fluctuate greater than \$1.00 per day).

(D) Undisputed Rulings. When information that was not available to the Corporation at the time of a ruling later becomes available and brought to the attention of the Corporation, an Officer may evaluate the information on a case-by-case basis. In no event will the Corporation reverse the original ruling. If the Corporation determines that the execution warrants further consideration, the Corporation may recommend an appropriate resolution to the disadvantaged party.

(E) Incoming Erroneous Order Accesses Liquidity-Providing Quote.

- (i) If an incoming order accesses a liquidity-providing quote in the book and such liquidity quote is:
 - (a) Equal to or less than 25% away from the last sale during the core trading session; or
 - (b) Equal to or less than 30% away from the last sale in the pre-market or post-market sessions

then the disadvantaged party may be forced by the Corporation to accept an adjustment offered by the counterparty, if such offer is within the guidelines of Section 7.10(c)(5).

- (ii) If an incoming order that accesses a liquidity-providing quote is:
 - (a) Greater than 25% away from the last sale during the core trading session; or
 - (b) Greater than 30% away from the last sale in the pre-market or post-market sessions

then the resulting trade(s), if rendered by the Corporation to be erroneous, will be automatically busted and no adjustments will be made.

(F) Incoming Order with Multiple Orders/Securities Executions.

- (i) If a customer order contains multiple securities (i.e., basket order) and/or multiple executions, the party requesting a ruling of the erroneous executions shall provide the Corporation with an electronic spreadsheet of all trades in question.
- (ii) The spreadsheet should be submitted within thirty (30) minutes of the initial request of ruling. The spreadsheet shall contain the name of the security, the time of execution, the executed price and when practicable, the consolidated last sale.
- (iii) The Corporation will review such occurrences utilizing only the numerical guidelines provided in Section 7.10(c)(5)(B)(i) above. Execution prices outside the numerical guidelines will be busted. Price adjustments will not be considered.

- (iv) Publication of Resolutions. All multiple orders/securities erroneous executions shall be communicated to ETP Holder(s) via telephone, electronic mail and/or website display.
- (G) Removal of Trades from Tape. The Corporation may direct the processors for the consolidated tapes to remove any executions determined to be a clearly erroneous error even if not cancelled or adjusted pursuant to Section 7.10(c) to avoid having a clearly erroneous error establish a high, low, opening, closing or other key market price that is not reasonably related to the current consolidated market price at the time of the erroneous error.
- (H) Odd Lot Prohibitions. The following transactions may be considered clearly erroneous executions:
- (i) Pursuant to Section 7.38(c), failure to aggregate odd lot orders into round lot orders when such orders are for the same account or for various accounts in which there is a common monetary interest; and
 - (ii) Unbundling round lots for the purpose of entering odd lot limit orders in comparable amounts.

Unbundling prohibitions and failing to aggregate odd lot orders described in (i) and (ii) above are applicable during early, core and late trading sessions and the limit order auction (8:00 a.m. EST) and market order auction (9:30 a.m. EST). Violation of (i) or (ii) above is considered conduct inconsistent with just and equitable principals of trade and is subject to enforcement action. Prohibited odd lot transactions are subject to nullification by the Corporation.

(d) – (e) No change.

* * * * *